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113TH CONGRESS
1ST SESSION

H. R. 639

To reform immigration detention procedures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2013

Ms. ROYBAL-ALLARD introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To reform immigration detention procedures, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Immigration Oversight and Fairness Act''.

SEC. 2. DETENTION CONDITIONS.

(a) DETENTION REQUIREMENTS.—All detention facilities shall fully comply with the following minimum requirements:

(1) ACCESS TO TELEPHONES.—Detention facilities shall provide to detainees reasonable and equitable access to working telephones, and the ability to contact, free of charge, legal representatives, foreign consulates, the immigration courts, the Board of Immigration Appeals, and the Federal courts, in addition to persons and offices contacted for the purpose of obtaining legal representation. Detention facilities shall provide to detainees access to telephones during facility working hours and on an emergency basis in accordance with the following:

(A) The detention facility shall provide to each detainee a copy of its rules governing telephone access and shall post those rules, together with an explanation of how to make calls, within sight of each telephone available to detainees. These rules shall be translated into Spanish and two additional languages spoken by a substantial part of the detainee population of the detention facility. If a detention facility has determined that more than 5 percent of its population is a certain ethnicity, the document should be translated into that ethnicity's appropriate language. The detention facility shall also provide oral interpretation and written trans-

lation assistance to detainees in reading any relevant materials required to request telephone access, including oral interpretation assistance for those who are not literate in English, Spanish, and other languages spoken by the detainee population of the facility.

(B) The rates charged for telephone calls shall be reasonable and equitable and shall not significantly impair detainees' access to telephones.

(C) The detention facility shall not restrict the number of calls detainees may place to their legal representatives or consular officials, or to any others for the purpose of obtaining legal representation, or limit the duration of those calls by rule or automatic cut-off, unless necessary for security reasons. The detention facility shall have a reasonable number of working phones available to detainees, and at a minimum one phone per each 25 users.

(D) The detention facility shall ensure the privacy of telephone conversations between detainees and legal representatives or consular officials, and calls made for the purpose of obtaining legal representation. Means to ensure

privacy may include the use of privacy panels, the placement of phones in housing pods, and other appropriate measures.

(E) Detainees' telephone calls to a court, legal representative, or consular official, or for the purpose of obtaining legal representation, shall not be monitored or recorded without a court order and without prior notification to the detainee.

(F) The detention facility shall take and deliver telephone messages to detainees as promptly as possible, but no less often than twice a day. Detainees shall be permitted to make confidential telephone calls promptly within 8 hours of receipt of messages left by a court, legal representative, prospective legal representative, or consular official as soon as reasonably possible after the delivery of the message.

(2) QUALITY OF MEDICAL CARE.—Detention facilities shall afford a continuum of prompt, high-quality medical care, including care to address medical needs that existed prior to detention, at no cost to detainees. Such medical care shall address all detainee health needs and shall include chronic care,

dental care, eye care, mental health care, individual and group counseling, medical dietary needs, and other medically necessary specialized care in accordance with the following:

(A) All detention facilities shall maintain current accreditation by the National Commission on Correctional Health Care and the Joint Commission on the Accreditation of Health Care Organizations. Detention facilities that are not accredited as of the date of the enactment of this Act will obtain such accreditation within one year, and if accreditation is not obtained by that time the Secretary of Homeland Security shall cease use of the facility. All standards, policies and practices shall at a minimum comply with the National Commission on Correctional Health Care Standards for Health Services in Jails.

(B) All detention facilities shall have a designated on-site health authority who is a physician, a health services administrator, or a health agency. Clinical decisions shall be made solely by a licensed health care provider.

(C) Each immigration detainee shall receive a comprehensive medical and mental

health intake screening by a qualified health care professional upon arrival at the facility and each immigration detainee shall receive a comprehensive medical and mental health examination and assessment by a qualified health care professional not later than 14 days after arrival.

(D) Any decision to deny requested medical care or treatment, or care or treatment recommended by any outside physician or specialist, to a detainee shall be made within 72 hours or earlier if medically necessary and shall be accompanied by a written explanation of the reasons for the denial. This decision and the written explanation of the decision shall be simultaneously communicated to the detainee and to the Secretary of Homeland Security.

(E) Detainees shall be afforded an opportunity to obtain an appeal of any decisions denying a request for medical treatment. Such an appeal or request for reconsideration shall be resolved in writing within 7 days or earlier if medically necessary by an appeals board that shall be composed of independent health care professionals in the fields relevant to the re-

quest for medical or mental health care. The written decision shall be conveyed to the on-site medical provider and the immigration detainee within 24 hours of a decision by the appeals board.

(F) Except in emergency situations where informed consent cannot reasonably be obtained, medical care and treatment shall be provided only with the informed consent of the detainee or a person authorized by the detainee or applicable law to provide such consent.

(G) Involuntary psychotropic medication may be used only if allowed by applicable law and then only in emergency situations when a physician has determined, after personally examining the patient, that—

(i) a detainee is imminently dangerous to self or others due to a mental illness; and

(ii) involuntary psychotropic medication is medically appropriate to treat the mental illness and necessary to prevent harm. If a detainee is represented by counsel, the administration of any psychotropic drug to the detainee shall be disclosed to

the detainee's counsel promptly and in any event within a reasonable time prior to any hearing in which the detainee will appear. If a detainee is not represented by counsel, the administration of any psychotropic drug to the detainee shall, with the informed consent of the detainee, be disclosed to the Immigration Court prior to any hearing in which the detainee will appear. Any disclosure to the court by any person of the administration of a psychotropic drug to the detainee shall be filed under seal and may be disclosed to other persons only in the same manner and to the same extent that medical records may be disclosed. Any detainee who receives medication pursuant to this subparagraph must be afforded a hearing pursuant to the procedures set forth in 28 CFR 549.43, as described in Washington v. Harper, 494 U.S. 210 (1990), before the detainee may receive medication again under this subparagraph.

(H) No drugs of any kind shall be administered to detainees without their informed consent for the purpose of sedation or controlling the detainee's behavior during transportation or removal or for the purpose of punishment.

(I) All detention facilities shall maintain complete medical records for every detainee, which shall be made available within 72 hours to any detention facility to which the detainee may be transferred. Medical records shall also be made available within 72 hours to a detainee, his legal representative, or other authorized individuals upon request by the detainee. Any and all medical and mental health records of a detainee shall be treated as confidential, as required by the Health Insurance Portability and Accountability Act of 1996.

(J) For each fiscal year after the passage of this Act, the Secretary of Homeland Security shall report to the Congress on a semiannual basis, and to Department of Homeland Security Office of Inspector General within 48 hours of any in-custody death, information regarding the death of any person who is in the custody of U.S. Immigration and Customs Enforcement that, at a minimum, includes—

(i) the name, gender, national origin, alien number, and age of the deceased;

(ii) the date on which detention in U.S. Immigration and Customs Enforcement custody commenced;

(iii) the date and location of death;

(iv) the location of last detention;

(v) a brief description of the circumstances surrounding the death;

(vi) the status and results of any investigation(s) that has been conducted into the circumstances surrounding the death;

(vii) each location where the individual was held in U.S. Immigration and Customs Enforcement custody or the custody of an entity contracting with U.S. Immigration and Customs Enforcement and the dates during which the individual was held at each location; and

(viii) all medical records of the deceased.

(K) All detainee transfers shall take into consideration the detainee's health and medical fitness. Continuity of care shall be preserved during and after transfers, and detainees shall suffer no interruption in the provision of treatment, including prescription medication.

(3) SEXUAL ABUSE REGULATIONS CONCERNING CARE AND CUSTODY OF DETAINEES.—

(A) IN GENERAL.—Detention facilities shall take all necessary measures to prevent sexual abuse of detainees, including sexual assaults, and shall observe the minimum standards under the Prison Rape Elimination Act of 2003 (42 U.S.C. 15601 et seq.).

(B) MEASURES WHERE ABUSE OCCURS.—Where sexual abuse occurs, detention facilities shall ensure that—

(i) prompt and appropriate medical intervention is taken to minimize medical and psychological trauma;

(ii) a medical history is taken and a physical examination is conducted by qualified and culturally appropriate medical professionals to determine the extent of physical injury and whether referral to another medical facility is indicated;

(iii) prophylactic treatment, emergency contraception, and follow-up for sexually transmitted diseases are provided;

(iv) the case is evaluated by a qualified mental health professional for crisis

intervention counseling and long-term follow-up;

(v) victims are separated from their abusers and are considered for release on parole or for an alternative to detention program; and

(vi) any and all medical and mental health records arising out of a detainee's allegation of sexual abuse shall be treated as confidential, as required by the Health Insurance Portability and Accountability Act of 1996.

(C) REPORTING.—A detention facility shall not subject any person to punishment or any other form of retaliation for reporting incidents of sexual abuse.

(D) INVESTIGATION.—In all cases of alleged sexual abuse, the detention facility shall conduct a thorough and timely investigation and shall provide to the Secretary of Homeland Security a report of the circumstances and the response of the detention facility. If the report is not completed within 30 days after alleged sexual abuse comes to the attention of the detention facility, the detention facility shall sub-

mit to the Secretary of Homeland Security a description of the status of the investigation and an estimated date of completion 30 days after the alleged sexual abuse comes to the attention of the detention facility and every 30 days thereafter until the report is provided to the Secretary of Homeland Security. The report required by this subsection shall include at minimum a determination of whether the alleged sexual abuse occurred, an in-depth analysis of the relevant facts including the causes of any sexual abuse that may have occurred and whether and to what extent the alleged abuse indicates a failure of policy, a failure of training, a failure of oversight, or a failure of management, and a description of the actions that the facility will take to prevent the occurrence of similar incidents in the future and a plan for monitoring the implementation of those actions. The detention facility shall provide to the Secretary of Homeland Security periodic reports monitoring the implementation of the plan in accordance with the schedule set forth in such plan as approved by the Secretary of Homeland Security.

(4) TRANSFER OF DETAINEES.—

(A) PROCEDURES.—In adopting procedures governing the transfer of individuals detained under section 236 of the Immigration and Nationality Act (8 U.S.C. 1226), and subject to the exception in subparagraph (D), the Secretary of Homeland Security shall promulgate regulations prohibiting transfer of a detainee if such transfer would—

(i) negatively affect an existing attorney-client relationship;

(ii) negatively affect the detainee's legal proceedings, including merits or calendar hearings, or a pending application with United States Citizenship and Immigration Services or the Executive Office for Immigration Review, by—

(I) limiting the detainee's access to securing legal representation;

(II) limiting the detainee's ability to prepare a legal defense to removal; or

(III) removing the detainee from the legal venue of such proceeding;

(iii) negatively affect the detainee's health and medical fitness; or

(iv) to the extent it does not conflict with clauses (i), (ii), and (iii)—

(I) place the detainee in a location more distant from the detainee's residence than the original detention location; or

(II) place the detainee in a location more distant from family members than the original detention location.

(B) NOTICE.—Unless exigent circumstances dictate an immediate transfer—

(i) the Secretary of Homeland Security shall provide not less than 72 hours notice to any detainee prior to transferring the detainee to another detention facility;

(ii) detainees shall be afforded at least one toll-free call following any transfer, and within 24 hours after the detainee's arrival at the transferee facility, the Secretary of Homeland Security shall notify the detainee's legal representative or if unrepresented, an adult family member or

other person designated by the detainee, of the transfer and the detainee's new location;

(iii) if removal proceedings are pending, the Secretary of Homeland Security shall also promptly notify the Immigration Court, Board of Immigration Appeals, or the Circuit Court of Appeals, as appropriate of the transfer and the detainee's new address; and

(iv) the Secretary of Homeland Security shall not transfer any detainee who has already requested, and is awaiting, a bond hearing or a bond redetermination hearing.

(C) EXCEPTION.—The Secretary may transfer a detainee who has an existing attorney-client relationship to an alternate detention facility if such transfer is necessitated by a highly unusual emergency, such as a natural disaster or comparable emergency.

(D) PROTECTING DETAINEES LEGAL RIGHTS.—If the Secretary determines that a transfer is necessary due to a highly unusual emergency, the Secretary shall ensure that the

detainee's legal rights are not prejudiced and the existing attorney-client relationship is not impaired, including evaluating the location of the detention facility based on it proximity to the detainee's counsel or nongovernmental or pro bono organizations providing free or low cost immigration legal services.

(E) RECORD.—In cases in which a detainee is transferred, the Secretary shall make a record of the reasons and circumstances necessitating such transfer.

(5) NOTICE.—

(A) IN GENERAL.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended by adding at the end the following:

''(f) NOTICE.—The Secretary of Homeland Security shall file the notice to appear or other relevant charging document with the immigration court and serve such notice on every alien detained under this Act, within 48 hours of the detention of such alien. Any alien, held for more than 48 hours shall be brought before an immigration judge for a custody determination within 72 hours of the arrest or detention of such alien. The requirements of this provision may be tolled for no more than 30 days upon request from an alien who demonstrates prima facie

eligibility for affirmative relief. The Secretary of Homeland Security shall—

"(1) document when a notice to appear is served on a detainee in order to determine compliance by the Secretary of Homeland Security with the 48-hour notice requirement; and

"(2) submit to the Committees on the Judiciary of the Senate and the House of Representatives an annual report concerning the Secretary of Homeland Security's compliance with such notice requirement.".

(B) APPLICABILITY OF OTHER LAW.—Nothing in section 236(f) of the Immigration and Nationality Act, as added by subparagraph (A), shall be construed to repeal section 236A of such Act (8 U.S.C. 1226a).

(b) REGULATIONS CONCERNING CARE AND CUSTODY OF DETAINEES.—

(1) RULEMAKING.—The Secretary of Homeland Security shall promulgate new rules, or modify existing rules, based on the report of the detention advisory committee established under paragraph (2), to ensure detainees are treated humanely and held in the least restrictive setting necessary for their safety and to ensure compliance with the general minimum

requirements set forth in paragraph (3), standards regarding classification of detainees set forth in paragraph (4), and the special standards for vulnerable populations set forth in paragraph (5). Such rules shall apply to all facilities in which the Secretary of Homeland Security detains noncitizens, including Service Processing Centers, Contract Detention Facilities, State or local government facilities used by Detention and Removal Operations through Intergovernmental Service Agreements, Bureau of Prisons facilities, and any other temporary or permanent facility used to hold detainees. The rules required under this paragraph shall be promulgated not later than 1 year after the Secretary of Homeland Security receives the report of the detention advisory committee established under paragraph (2), or 1 year after such report is due, whichever is earlier.

(2) DETENTION ADVISORY COMMITTEE.—The Secretary of Homeland Security shall convene, and receive a report from a detention advisory committee comprised of experts from U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, the Office of Refugee Resettlement, and Division of Immigration Health Services in the De-

partment of Health and Human Services, and an equal number of independent experts from non-governmental organizations and intergovernmental organizations with expertise in working on behalf of aliens detained under immigration laws and vulnerable populations. The independent experts shall at a minimum include representatives of the American Bar Association and the United Nations High Commissioner for Refugees. The detention advisory committee shall review and revise all the guidelines found in the Secretary of Homeland Security's Detention Operations Manual, as amended, based on identifiable deficiencies and best practices that treat aliens both safely and humanely. The detention advisory committee shall submit a report to the Secretary of Homeland Security within 12 months after the date of the enactment of this Act. For good cause, the Secretary of Homeland Security may extend the time for submission of the advisory committees report for an additional six months.

(3) TRAINING.—The Secretary of Homeland Security shall develop and implement a training protocol for all personnel in all facilities in which non-citizens are detained. The training protocol shall include periodic updates to initial comprehensive train-

ing. The Secretary shall monitor the implementation of the protocol annually and shall ensure that all personnel who are required to be trained under the protocol have received the necessary training. The protocol shall include—

(A) an overview of immigration detention and the characteristics of the noncitizen detainee population;

(B) an overview of the detention standards;

(C) specific guidance on each of the detention standards; and

(D) a description of the Secretary's quality assurance procedures.

(4) GENERAL MINIMUM REQUIREMENTS.—The Secretary of Homeland Security's rules regarding conditions of detention shall ensure that the following requirements are met:

(A) FAIR AND HUMANE TREATMENT.—Detainees shall not be subject to cruel, degrading or inhumane treatment such as verbal or physical abuse or harassment, sexual abuse or harassment, or arbitrary punishment.

(B) USE OF FORCE AND RESTRAINTS.—Detainees shall not be subjected to shackling,

1 handcuffing, solitary confinement, Tasers, elec-
2 tric shields, restraint chairs, or strip searches
3 unless and to the extent that such techniques
4 are necessary to ensure the security of other de-
5 tainees, staff, or the public and where no less
6 coercive or degrading measures are available to
7 achieve that end. These techniques shall in no
8 event be used for the purpose of humiliating de-
9 tainees either within or outside the detention
10 facility. Detention facilities shall adopt written
11 policies pertaining to the use of force and the
12 use of restraints, and shall train all staff on the
13 proper use of such devices.

14 (C) INVESTIGATION OF GRIEVANCES.—De-
15 tainees shall have the right to prompt, effective,
16 transparent, and impartial grievance proce-
17 dures. Such procedures shall include review of
18 grievances by officials of the Department of
19 Homeland Security who do not work at the
20 same detention facility where the detainee filing
21 the grievance is detained in accordance with the
22 following:

23 (i) An otherwise valid grievance shall
24 not be denied for noncompliance with a
25 procedural requirement if such noncompli-

ance is due to ignorance, fear, excusable neglect or other reasonable cause.

(ii) Detainees shall be afforded the opportunity to complain to staff of U.S. Immigration and Customs Enforcement directly and confidentially, outside the grievance process.

(iii) Detainees shall not be subject to retaliation for making use of the grievance procedure or procedure for complaining directly to staff of U.S. Immigration and Customs Enforcement.

(iv) Detention facilities shall orally inform detainees of the grievance procedure and the procedure for complaining directly to staff of U.S. Immigration and Customs Enforcement and shall provide to every detainee a copy of those procedures within 24 hours after admission. The detention facility shall provide oral interpretation and written translation assistance to detainees in completing any grievance or complaint forms or other relevant materials required to comply with grievance procedures.

(v) Detention facilities shall make an annual report regarding the grievances received, the responses made, and the time period for response, and such report shall be submitted to the Secretary of Homeland Security on January 31 of each year.

(vi) All grievances shall be investigated.

(D) LOCATION OF FACILITIES.—Detention facilities shall be located, to the extent practicable, within 50 miles of a city or municipality in which there is a demonstrated capacity to provide competent legal representation by nonprofit legal aid organizations or other pro bono attorneys to detained noncitizens, including asylum seekers and other vulnerable immigrant populations. The Secretary of Homeland Security shall seek to use only facilities within the stated 50-mile radius by January 1, 2014.

(E) ACCESS TO LEGAL MATERIALS.—Detainees shall have available an on-site law library with sufficient space to facilitate detainees' legal research and preparation of documents. The law library's holdings shall include up-to-date copies of legal materials designated

by the Secretary of Homeland Security, including immigration law materials. The law library shall be provided with adequate equipment for legal research and the preparation of legal documents. Such equipment shall include, at a minimum, computers, printers, typewriters, and copiers. Information regarding the availability of the library, procedures for requesting its use, and instruction on the use of the library and library equipment shall be provided to all detainees at the time of admission into the detention facility, and shall be posted in the law library together with a list of the library's holdings. The detention facility will make available to detainees any assistance that may be necessary to allow detainees to use the library effectively and shall provide special assistance as the Secretary of Homeland Security may prescribe to detainees who are not literate in English. Library services, including access to databases and printing and copying, shall be provided without charge to detainees.

(F) LEGAL VISITS.—

(i) IN GENERAL.—Legal visits shall not be restricted absent narrowly defined

exceptional circumstances, including a natural disaster or comparable emergency beyond the control of the Secretary of Homeland Security.

(ii) PROCEDURES.—Detainees shall be entitled to private meetings with their current or prospective legal representatives or their legal assistants. Interpreters shall be allowed to accompany legal representatives and legal assistants on legal visits subject to appropriate security procedures. Legal visits shall be permitted a minimum of 8 hours per day on regular business days and 4 hours per day on weekends and holidays, except that if lack of space for interviews at the detention facility, the conduct of immigration hearings on site, or other factors lead to excessive delay between the time the legal representative is ready to visit the detainee and the time space becomes available, the Secretary of Homeland Security shall require such additional time for legal visits or other measures as may be sufficient to avoid excessive delay. Excessive delay for purposes of this para-

graph is delay of 2 hours or more, occurring more than 2 times per month over a 12-month period. Detention facilities shall maintain a procedure allowing legal representatives and legal assistants to call ahead to determine if a detainee is held at that facility, and they shall take messages from legal representatives and promptly deliver them to the detainee. Messengers, including individuals who are not attorneys, legal representatives, or legal assistants, shall be permitted to deliver documents for detainees to and from the facility. Detention facilities shall promptly and prominently post the most current official list of pro bono legal organizations and their contact information in detainee housing units and other appropriate areas, and such lists shall be updated by the Secretary of Homeland Security on a semi-annual basis. Detention facilities may not retaliate in any way, including denial or limitation of access to detention facilities, for complaints or public or private statements made by legal representatives regarding

the detention facility's compliance with regulations relating to conditions of detention.

(G) SPECIAL CORRESPONDENCE.—Special correspondence shall not be read by staff of the detention facility or other personnel, contractors, or agents of the Secretary of Homeland Security, and shall not be opened outside the presence of the detainee. For this purpose, special correspondence includes detainees' written communications to or from private attorneys and other legal representatives; government attorneys; judges and courts; embassies and consulates; the president and vice president of the United States, members of the Congress, officers and other personnel of the Department of Justice; officers and other personnel of the Department of Homeland Security; officers and other personnel of the U.S. Public Health Service; administrators of grievance systems; State and local officials, representatives of the news media, and representatives of nongovernmental organizations and intergovernmental organizations working on behalf of aliens held in detention and vulnerable populations. Correspond-

ence will only be treated as special correspondence if marked ''special correspondence'' or ''legal mail'' or if the title and office of the sender (for incoming correspondence) or addressee (for outgoing correspondence) are unambiguously identified on the envelope, clearly indicating that the correspondence is special correspondence. Special correspondence shall be promptly delivered and promptly posted. In general, correspondence will be deemed promptly delivered if it is delivered to the detainee within 24 hours after its receipt by the detention facility, and correspondence will be deemed promptly posted if it is placed into the United States mail the next day on which the Post Office is open for business after the detainee places the correspondence in the location designated by the facility for outgoing mail.

(H) ACCESS TO DETENTION FACILITIES.—Detention facilities shall afford access as follows:

(i) Subject to reasonable conditions to protect the security of the facility, detention facilities shall afford access to private attorneys, other legal representatives and

legal personnel such as paralegals and Board of Immigration Appeals accredited representatives; government attorneys; judges and courts; embassies and consulates; the president and vice president of the United States, members of Congress and their staff; officers and other personnel of the Department of Justice; officers and other personnel of the Department of Homeland Security; officers and other personnel of the U.S. Public Health Service; administrators of grievance systems; State and local officials, representatives of the news media, and representatives of nongovernmental organizations, community service organizations, and intergovernmental organizations.

(ii) Independent observers, including nongovernmental organizations, shall be permitted to conduct site visits, meet privately with detainees, test telephones and pro bono calling platforms, and take other reasonable steps to monitor compliance with regulations regarding conditions of detention. Such observers and organiza-

tions shall not be prohibited from issuing public reports on the findings of monitoring visits.

(iii) Detention facilities shall accommodate requests for facility tours within a reasonable time not to exceed 1 week.

(iv) Access of media representatives to detention facilities and individual detainees may be restricted only to the extent necessary to preserve the privacy of detainees, the security and good order of the facility, the safety of the interviewer, national security, or any other obligation imposed by law or court order. Such access may not be restricted based on the content of the media representative's reporting, and retaliation against detainees and members of the media based on the content of their speech shall be prohibited.

(v) Detention facilities may not retaliate in any way, including denial or limitation of access to detention facilities, against any visitor for complaints, or public or private statements, regarding the de-

tention facility's compliance with regulations relating to conditions of detention.

(I) TRANSLATION CAPABILITIES.—Detention facilities shall employ staff that, to the extent practicable, is qualified in the languages represented in the population of detainees at each such facility and shall provide alternative translation services where necessary.

(J) RECREATIONAL PROGRAMS AND ACTIVITIES.—Detainees shall be afforded access of at least one hour per day to indoor and outdoor recreational programs and activities.

(K) SAFE AND SANITARY LIVING ENVIRONMENT.—Detention facilities shall house no more individuals than permitted by the rated bed capacity for the facility, where the rated bed capacity is defined by the original design capacity, plus or minus capacity changes resulting from building additions, reductions, or revisions. Each detainee shall receive appropriate clothing and a bed and a mattress placed in an area specifically designated for residential use, rather than an area re-tasked for residential use such as common dayrooms, recreation areas, or visitation rooms. Detention facilities shall be

1 maintained in a safe and sanitary condition,
2 and adequate ventilation and reasonably com-
3 fortable indoor temperatures shall be main-
4 tained at all times.

5 (L) LEGAL ORIENTATION TO ENSURE EF-
6 FECTIVE IMMIGRATION PROCEEDINGS.—

7 (i) IN GENERAL.—The Attorney Gen-
8 eral, in consultation with the Secretary of
9 Homeland Security, shall ensure that all
10 detained aliens, including unaccompanied
11 minors, in immigration proceedings receive
12 legal orientation from an independent non-
13 governmental organization through a pro-
14 gram administered and implemented by
15 the Executive Office for Immigration Re-
16 view of the Department of Justice.

17 (ii) CONTENT OF PROGRAM.—The
18 legal orientation program developed pursu-
19 ant to this subparagraph shall be based on
20 the Legal Orientation Program carried out
21 by the Executive Office for Immigration
22 Review on the date of the enactment of
23 this Act. Presentations for minors shall
24 utilize a child-centered model.

(5) CLASSIFICATION.—The Secretary of Homeland Security's rules shall ensure that detainees with no history of a criminal conviction are separated by sight and sound from detainees and inmates with criminal convictions, pretrial inmates facing criminal prosecution, and those inmates exhibiting violent behavior while in detention.

(6) VULNERABLE POPULATIONS.—The Secretary of Homeland Security's rules regarding conditions of detention for vulnerable populations shall—

(A) recognize the unique needs of asylum seekers, victims of torture and trafficking, families with children, detainees who do not speak English, detainees with special religious, cultural or spiritual considerations, and vulnerable populations listed in section 3(c); and

(B) ensure that procedures and conditions of detention are appropriate for such vulnerable populations.

(7) STAFFING.—For purposes of this subsection and protecting vulnerable populations, the Secretary of Homeland Security shall appoint at least three members to the Directorate of Policy at the GS–15 level with substantial academic credentials and expertise in working directly with vulnerable popu-

lations including children, families and victims of trafficking, trauma, and torture who shall be responsible for setting, implementing, and overseeing policy and regulatory developments concerning vulnerable populations.

SEC. 3. SECURE ALTERNATIVES TO DETENTION.

(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary of Homeland Security shall fully implement and utilize secure alternatives to detention programs.

(b) SECURE ALTERNATIVES TO DETENTION PROGRAMS.—

(1) NATURE OF THE PROGRAM.—For purposes of this section, the programs referred to in subsection (a) are programs under which eligible aliens are released under supervision, assistance and monitoring that ensure they appear at all immigration interviews, appointments, and hearings. The elements of the secure alternatives to detention programs are—

(A) group presentations and individual screening;

(B) provision of services to aliens released; and

(C) on-going assistance, supervision, and monitoring.

(2) VOLUNTARY PARTICIPATION.—An alien's participation in the program is voluntary and shall not confer any rights or benefits to the alien under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) PROGRAM DEVELOPMENT.—The program shall be developed in accordance with the following guidelines:

(A) The Secretary of Homeland Security shall design the program in consultation with nongovernmental organizations and academic experts in both the immigration and the criminal justice fields.

(B) All aliens in the custody of the Secretary of Homeland Security deemed eligible for secure alternatives to detention programs shall be released in the least restrictive setting needed to ensure appearance at all immigration interviews, appointments and hearings. The programs shall utilize a continuum of methods, including releasing the alien to an individual or organizational sponsor, a supervised group

home, or a supervised, non-penal community setting.

(C) Nongovernmental organizations and State and local social service agencies that serve immigrants shall be contracted to conduct group and individual screening and provide services to program participants.

(D) The Secretary of Homeland Security shall ensure that each alien participates in a legal presentation provided through the legal orientation presentation program administered by the Executive Office for Immigration Review.

(c) PROTECTION OF VULNERABLE POPULATIONS.—Within 72 hours of detaining an alien, the Secretary of Homeland Security shall screen the alien to determine if he or she falls into the following designated groups. Any alien described in the following designated groups who meets the criteria set forth under section 236(b) of the Immigration and Nationality Act, as amended by this Act, shall be released on parole, a reasonable bond, or the alien's own recognizance subject to the requirements of such section 236(b):

(1) Aliens who have serious medical or mental health needs or a disability.

(2) Pregnant or nursing women.

(3) Aliens who are being detained with one or more of their children.

(4) Aliens who provide financial, physical, and other direct support to their minor children, parents, or other dependents.

(5) Aliens who are over the age of 65.

(6) Children (as defined at section 101(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(c)(1))).

(7) Victims of abuse, violence, crime or trafficking.

(8) Asylum seekers and torture survivors who have demonstrated a credible fear of persecution or a reasonable fear of torture.

(9) Other groups designated in regulations or guidance promulgated after the date of the enactment of this Act by the Secretary of Homeland Security.

(10) Individuals who have a nonfrivolous claim to United States citizenship or aliens who are eligible for relief under a provision of the Immigration and Nationality Act.

(d) OPTIONS REGARDING DETENTION DECISIONS FOR VULNERABLE POPULATIONS AND PLACEMENT IN AL-

TERNATIVES TO DETENTION.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''(c)'' and inserting ''(d)'';

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''or'' at the end;

(ii) in subparagraph (B), by striking ''but'' at the end; and

(iii) by inserting after subparagraph (B) the following:

''(C) the alien's own recognizance; and'';

(C) by redesignating paragraph (3) as paragraph (4); and

(D) by inserting after paragraph (2) the following:

''(3) may enroll the alien in a secure alternatives to detention program; but'';

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (e), (f), (g), and (h) respectively;

(3) by inserting after subsection (a) the following:

"(b) CUSTODY DECISIONS FOR VULNERABLE POPULATIONS.—

"(1) IN GENERAL.—Not later than 72 hours after an alien's detention unless the 72-hour requirement is waived in writing by the alien, an alien who is a member of a vulnerable population (as defined by subsection (c)) shall be released from the Secretary of Homeland Security's custody and shall not be subject to electronic monitoring unless the Secretary of Homeland Security demonstrates that the alien—

"(A) is subject to mandatory detention under section 235(b)(1)(B)(iii)(IV), 236(c) or 236A; or

"(B) poses a flight risk or a risk to others or national security.

"(2) RELEASE.—An alien shall be released under this subsection—

"(A) on the alien's own recognizance;

"(B) by posting a reasonable bond under subsection (a); or

"(C) on parole in accordance with section 212(d)(5)(A).

"(c) PARTICIPATION IN ALTERNATIVES TO DETENTION.—An alien who is denied release on recognizance, pa-

role, or bond, or is unable to pay the bond shall be selected for participation in a secure alternatives to detention program unless the Secretary of Homeland Security demonstrates by substantial evidence that the alien—

"(1) is subject to mandatory detention under section 235(b)(1)(B)(iii)(IV) or 236A; or

"(2) is a flight risk or the alien's participation in the program would create a risk to others or national security.

"(d) DECISIONS UNDER THIS SECTION.—In the case of a decision under subsection (a), (b), or (c), the following shall apply:

"(1) The decision shall be made in writing and shall be served upon the individual in the language spoken by the alien. A decision to continue detention without bond or parole shall specify in writing the reasons for that decision.

"(2) The decision shall be served upon the alien within 72 hours of the individual's detention or, in the case of an individual subject to section 235, 238, or 241(a)(5) within 72 hours of a positive credible or reasonable fear determination.

"(3) An alien subject to this section, including all aliens who are entitled to a removal hearing under section 240, may at any time after being

served with the Secretary of Homeland Security's decision under subsections (a), (b), or (c) request a redetermination of that decision by an immigration judge.

"(4) All custody decisions by the Secretary of Homeland Security shall be subject to redetermination by an immigration judge. Nothing in this subsection shall be construed to prevent an individual from requesting a bond redetermination.

"(5) The Attorney General or an immigration judge, at any time, may redetermine an alien's classification under subsection (c), the bond of someone released, or the custody status of someone placed in an alternatives to detention program. Nothing in this subsection would preclude a person from being released on bond after initially participating in an alternatives to detention program."; and

(4) in subsection (f), as redesignated, in paragraph (2), by inserting "or for humanitarian reasons," after "such an investigation,".

(e) ELIGIBILITY AND OPERATIONS.—Nothing in this section shall be construed to modify the care and custody of unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act (6 U.S.C. 279(g)(2))) who shall be considered to be in the care and

exclusive legal and physical custody of the Secretary of Health and Human Services. Such children shall be subject to removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a), with the exception of children from contiguous countries eligible for administrative voluntary departure, and shall not be permitted to participate in the program.

(f) LESS RESTRICTIVE CUSTODIAL DETENTION.—If an alien is determined not to meet the requirements for release on recognizance, bond or parole, or subsequently does not meet the requirements for secure alternatives to detention programs, the alien shall be considered for placement in less restrictive forms of custody:

(1) Less restrictive forms of custodial detention include electronic monitoring such as the use of ankle bracelets that monitor an individual's movement and the use of similar electronic devices.

(2) An individualized determination shall be made in each alien's case about the use of electronic monitoring.

(3) Aliens who would otherwise be subject to detention including under section 236 of such Act (8 U.S.C. 1226) may be placed in electronic monitoring or other less restrictive forms of custody.

(4) Subject to the availability of appropriations, facilities shall be developed and used that offer the least restrictive secure setting for aliens in custody.

SEC. 4. PROGRAM OVERSIGHT AND REVIEW.

(a) RELATIONSHIPS OF APPLICATION TO CERTAIN ORDERS.—An alien who is present in the United States and has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act—

(1) notwithstanding such order, may be selected for a secure alternatives to detention program; and

(2) shall not be required to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal, or voluntary departure order.

(b) IMPLEMENTING REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall promulgate regulations to implement the secure alternatives to detention programs.

(c) REPORTING REQUIREMENTS.—Not later than 365 days after the date of the enactment of this Act and annually thereafter, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives, the Committee on the Judiciary of the House of Representatives, the Committee on

Homeland Security and Governmental Affairs of the Senate, and the Committee on the Judiciary of the Senate a report that details all policies, regulations, and actions taken to comply with the provisions in this Act and the amendments made by this Act, including efforts to increase the use of the secure alternatives to detention programs, and a description of efforts taken to ensure that all aliens in expedited removal proceedings are residing under conditions that are safe, secure, and healthy.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this Act and the amendments made by this Act. Amounts appropriated pursuant to this subsection shall remain available until expended.

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